

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-cv-583-FDW
(3:11-cr-384-FDW-5)**

RICKY EUGENE LYNN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER is before the Court on Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. (Doc. No. 1.) Petitioner seeks relief under Johnson v. United States, 135 S. Ct. 2551 (2015).

On May 3, 2016, Petitioner sent a letter to the Court asking it to review his conviction to determine if he is eligible for a reduction in his sentence pursuant to Johnson. United States v. Lynn, No. 3:11-cr-384-FDW-5 (W.D.N.C. filed May 3, 2016), Doc. No. 300. The letter was docketed in Petitioner's closed criminal case. Id.

Petitioner signed and placed a document he refers to as a supplemental motion for relief pursuant to Johnson in the prison mail system on July 14, 2016. Upon its receipt, the Clerk of Court opened a civil case and filed the document as a Motion under 28 U.S.C. § 2255. (Doc. No. 1.)

The one-year federal statute of limitations to file a § 2255 motion for relief under Johnson expired on or about June 26, 2016. See U.S.C. § 2255(f)(3). Therefore, the Court will construe Petitioner's May 3, 2016 letter as a Motion to Vacate under § 2255 and direct the Clerk of Court to file that document in Petitioner's open civil case. The Clerk also will be directed to

recharacterize the instant Motion to Vacate (Doc. No. 1) as an amended Motion to Vacate.

On November 17, 2015, the judges of this Court issued a Standing Order appointing the Federal Defenders of Western North Carolina to represent any defendant who was previously determined to have been entitled to appointment of counsel, or who is now indigent, to determine if that defendant is eligible for relief under Johnson. Standing Order in re: Johnson v. United States, No. 3:13-mc-00196-FDW (W.D.N.C. Nov. 17, 2015). Petitioner was previously determined to be indigent. Petitioner appears to fall within the purview of this Court's Standing Order, the Court will allow the Federal Defender sixty (60) days to review the Petitioner's case and to file a supplement, if any, to the Petitioner's motion to vacate.

IT IS, THEREFORE, ORDERED THAT:

1. The Clerk of Court shall file Document No. 300 (pro se letter) of criminal case 3:11-cr-384-FDW-5 in civil case 3:16-cv-583-FDW and recharacterize it as a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255;
2. The Clerk of Court shall recharacterize current Document No. 1 of civil case 3:16-cv-583-FDW as an amended Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255;
3. No later than sixty (60) days from entry of this Order, the Federal Defenders of Western North Carolina may file a supplement to Petitioner's motion to vacate; and
4. The Clerk of Court shall provide a copy of this Order to Petitioner and the Federal Defenders of Western North Carolina.

Signed: September 22, 2016



Frank D. Whitney
Chief United States District Judge

